

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

DALE GARCIA and JANA
ARCHAMBEAU, husband and wife,

Plaintiffs,

v.

THOMAS BENENATI and LORETTA
BENENATI, husband and wife and the
marital community thereof; RYAN
LAYTON and JANE DOE LAYTON,
husband and wife and the marital
community thereof; ROBERT INGRAM
and JANE DOE INGRAM, husband and
wife and the marital community thereof;
MICHAEL STERNBACK and JANE DOE
STERNBACK, husband and wife and the
marital community thereof; MATT NILES
and JANE DOE NILES, husband and wife
and the marital community thereof; STATE
OF WASHINGTON; WASHINGTON
STATE PARKS AND RECREATION
COMMISSION; JOHN and JANE DOES 1-
20 and the marital communities thereof, and
ABC CORPORATIONS 1-10,

Defendants.

No. 3:20-cv-05945-BHS

DEFENDANTS' PARTIAL
OPPOSITION TO PLAINTIFFS'
MOTION TO AMEND

1 *Defendants wish to call the Court's attention to the fact that Plaintiffs' Motion to*
 2 *Amend Complaint has implications for Defendants' pending Motion for Summary*
 3 *Judgment, in which the pleadings are now closed.*

4 Defendants do not oppose Plaintiffs' *Motion to Amend Complaint* – with one
 5 exception. It accomplishes what they say they intended to do at first. However, it still
 6 contains improper claims against Defendant Benenati that must be dismissed.

7 In 2019, Plaintiffs filed suit in this court alleging excessive force by a State Parks
 8 ranger, and asserting related claims against him and his supervisors. (“*Garcia I*”). No. 3:19-
 9 cv-05597-BHS. But Plaintiffs failed to sue one of his supervisors. Hence in September
 10 2020 they filed an identical suit in state court in an attempt to avoid this court's deadline on
 11 amending their Complaint. (“*Garcia II*”). It contained federal and state law claims against
 12 all defendants. Defendants removed that action to this Court and sought its dismissal on the
 13 basis of res judicata/claim splitting. *Dkt. 1, 3.*

14 Plaintiffs' response to the summary judgment motion was that an editing error had
 15 caused the identical lawsuit to be filed when in fact they only sought to bring state law
 16 claims against everyone except Defendant Ranger Benenati. Plaintiffs also filed a proposed
 17 amended Complaint, but did not file a motion to amend. *Dkt. 9.*

18 Plaintiffs have now filed a motion to amend. *Dkt. 12.* However, this iteration of their
 19 Complaint remains improper: *The new version of their Complaint still contains state law*
 20 *claims against Defendant Benenati.* Thus, Plaintiffs are suing Benenati for state law claims
 21 in both lawsuits. This is the definition of claim splitting. He is not required to fight identical
 22 claims on two fronts. Defendants suggest that the proper remedy is to dismiss the state law
 23 claims against Ranger Benenati in this matter (*Garcia II*), and then remand the remaining
 24 claims to Clark County Superior Court. This would allow all claims state and federal to
 25 proceed against Benenati in the original action, *Garcia I*. And, the state law claims against
 26 all other defendants could proceed in state court.

This Court possesses supplemental jurisdiction over the state law claims because they involve the identical set of facts that underlie Plaintiffs' Section 1983 claims:

[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

28 U.S.C. § 1367(a). The federal law claims against Ranger Benenati have not been dismissed, so that statutory basis to decline supplemental jurisdiction does not exist. *See* 28 U.S.C. § 1367(c) ("The district courts may decline to exercise supplemental jurisdiction over a claim ... if ... the district court has dismissed all claims over which it has original jurisdiction").

Version	<i>Garcia I</i> Complaint	<i>Garcia II</i> Complaint
Original	State and federal law claims against all defendants	State and federal law claims against all defendants
Current	<i>After dismissals</i> : State and federal law claims against Benenati only	State law claims against all defendants, including Benenati

Defendants request that the Court allow Plaintiffs' amendment. But, on the condition that the Court grant Defendants' motion for summary judgment and dismiss the state law claims against Defendant Benenati on the grounds of claim splitting before remanding the state law claims to state court.

DATED: November 4, 2020

KEATING, BUCKLIN & McCORMACK, INC., P.S.

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CERTIFICATE OF SERVICE

I hereby certify that on the below date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: N/A.

DATED: November 4, 2020

/s/ Stewart A. Estes

Stewart A. Estes, WSBA #15535